

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

January 27, 2004

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IN RE: Petition of BellSouth Long Distance,
Inc. to Provide Competing Local
Telecommunications Services

) Docket No. 0300602
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T.R.A. DOCKET ROOM

RESPONSE OF AT&T TO OBJECTION OF BELL SOUTH LONG DISTANCE

AT&T Communications of the South Central States, LLC ("AT&T") submits the following response to the "Objection to Petition to Intervene" filed by BellSouth Long Distance, Inc. ("BSLD").

BSLD has filed an application to amend its certificate of convenience and necessity to allow the carrier to offer local telephone service throughout Tennessee, including the service area of BellSouth Telecommunications, Inc. ("BellSouth"), which is an affiliate of BSLD. In the application, BSLD states that it believes the carrier should be regulated "in its capacity as a CLEC" (competitive local exchange carrier) rather than as an incumbent local exchange carrier.

By statute, the Tennessee Regulatory Authority is required to conduct a hearing on BSLD's certificate application. See T.C.A. § 65-4-210(c). Under the Tennessee Uniform Administrative Procedures Act, this hearing must be conducted as a contested case proceeding. See T.C.A. § 4-5-102(3).

AT&T has filed a petition to intervene as a party in that contested case proceeding. Pursuant to T.C.A. § 4-5-310, the Authority is required to grant the petition to intervene if (1) it is filed seven or more days prior to the hearing; (2) the petition states facts demonstrating that the petitioner's "legal rights, duties, privileges, immunities or other legal interest may be determined

in the proceeding”; and (3) “ the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.”

As a competitive, local exchange carrier operating in Tennessee, AT&T clearly has a legally cognizable interest in whether the Authority allows BSLD to provide local service in Tennessee and, if so, whether the Authority will impose “minimum requirements or safeguards” which are “directly related to preventing anti-competitive practices” between BSLD and BellSouth. BellSouth BSE v. Tennessee Regulatory Authority, Tenn. Court of Appeals, opinion filed February 18, 2003, at p. 21.

In that case, the Court reversed the TRA’s order of Feb. 14, 2000, Docket 98-00879, in which the Authority denied an application by another BellSouth affiliate, BSE, Inc., to provide local service within the BellSouth service area. The Authority raised a number of concerns about the potential for anti-competitive collusion between BSE and BellSouth. The Court held that the TRA should not have denied the application but granted it and “establish[ed] the minimum requirements or safeguards it thought necessary to prevent such anticompetitive conduct.” The Court explained (at 21),

While Tenn. Code Ann. § 65-5-208(c) authorizes the TRA to implement safeguards to prohibit anticompetitive conduct between an ILEC and its affiliated CLEC, we can find nothing in the statute to authorize the TRA to deny certification of a related entity simply because, by its nature, the affiliate relationship may provide the opportunity for anticompetitive practices. The legislature has prohibited anticompetitive conduct, not affiliation relationships. The TRA’s responsibility in that situation is to put in place standards or requirements to prohibit and prevent the anticompetitive possibilities from becoming realities and/or to make violations easier to discover so that regulation is effective. [Emphasis added.]

The anti-competitive concerns raised by the Authority are discussed at length both in the TRA’s final Order in Docket 98-00879 and in the opinion of the Court of Appeals. Those concerns, and others, must be addressed in this proceeding. As the Court Appeals said, it is the

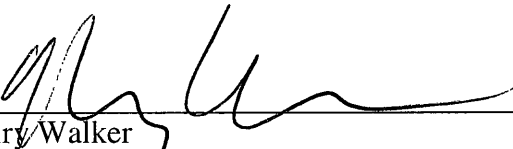
TRA's "responsibility" to establish "the minimum requirements or safeguards" which are necessary to address those anti-competitive concerns. In view of those statements, BSLD's claim that there "are no material issues to be argued concerning the authority sought by BSLD" indicates that BSLD does not understand the Court's instructions or the importance of this proceeding.

AT&T participated actively in the two applications filed by BSE, dockets 97-07505 and 98-00879, which raised many of the same issues as BSLD's Petition. AT&T, like any other competing local carrier, has an interest in insuring that, if BSLD's application is granted, the TRA imposes appropriate safeguards to deter BSLD and BellSouth from engaging in "anti-competitive practices." See T.C.A. § 65-5-208(c). AT&T plainly has a legal right to intervene in this case.¹

For these reasons, BSLD's Objections should be disregarded and AT&T's Petition to Intervene granted.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

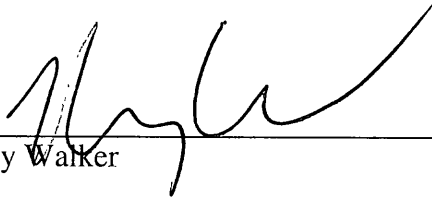
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¹ Contrary to the statement in footnote 1 of BSLD's "Objection," AT&T did not participate in the appeal of the TRA's BSE decision. In the footnote, BSLD also refers to the BSE docket which was appealed to the Court as TRA Docket 97-01505, order issued December 8, 1998. In fact, it was Docket 98-00879, order issued February 14, 2000.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to the following on this the 27th day of January, 2004.

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